

John Pollock

February 12. 1760.

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MEMORIAL

F O R

Sir Michael Stewart of Blackball, Baronet, and William Cuninghame of Craighends, Esq; Complainers;

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A G A I N S T

Captain JOHN POLLOCK.

THE Memorialists have complained to your Lordships, of Capt. Pollock's being admitted on the Roll of Freeholders of the County of Renfrew, at last Michaelmas Head-court.

The Title produced for him was, a Charter of Resignation in his favour, of the just and equal Half, *pro indiviso*, of all and haill the Twenty-pound Land of Over-Pollock, proceeding upon a Procuratory of Resignation contained in a Disposition by his Brother Sir Robert Pollock, to him, of the foresaid just and equal Half, *pro indiviso*, of all and haill the foresaid Twenty-pound Land of Over-Pollock.

And for instructing that these Lands were upwards of L. 400 of valued Rent, Reference was made to the Valuation-book of the County, from which it appears the whole Twenty-pound of Over-Pollock was valued at the Rate of L. 1000 Scots.

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great Importance, were the Objection to be sustained it would cutt off all Votes in which there is any common property. As to the Valuation not being divided. Thinks it of no Importance. Alenmoor never thought such Persons entitled to common property could either of them exercise any Right over that Property or neither of them has any Property. The Lords sustain the Objection & the Vote not given.

6th March 1760

Affleck Thinks it necessary to en- title to a Vote

That there should be a property and a divided property and as there was in this Case no divided property and no Division of the Valuation

Thinks the Vote should not be sustained.

Coalstown The Lord says that he who stands in feist in a certain Quantity of Lands should have a Vote and makes no Distinction whether it be divided or not

Upon This a Question of

Upon this Qualification Capt. *Pollock* was inrolled ; and the Memorialists complained to your Lordships of that Inrolment as illegal ; *1^{mo}*, for that it proceeds upon an *undivided* Property ; *2^{do}*, that the Valuation is also *undivided*.

Your Lordships, upon advising the Petition and Complaint, with Answers and Replies, were pleased, “ before Answer, to “ ordain Memorials to be given in by the Petitioners, and the “ said Capt. *Pollock*, upon the Nature of his Right, and that “ against this Day se’en-night, being the 12th instant.” In obedience to which Order, what follows is humbly submitted.

The Arguments drawn from the Nature of Property, to shew that an *undivided* Property cannot intitle to a Vote, shall not be repeated. Your Lordships will find them well stated in the Complaint and Replies.

The Illustration of these Principles, from the Case of Apprisings, and the Statute 1681, which expressly enacts, “ That “ after the expiring of the Legal, the Appriser or Adjudger “ first infest shall only have a Vote, and no other Appriser or “ Adjudger coming in *pari passu*, till their Shares be divided,” has likewise been stated, and shall not be resumed. The Memorialists apprehend, that it is an Authority in point, of the Legislature itself, that an undivided Property cannot intitle to vote.

The Case of Heirs-portioners was likewise mentioned, as similar to the present. And although no Decision of this Court has occurred upon the Question, Whether Heirs-portioners be intitled to be inrolled before their Property be divided? yet, in different Counties in *Scotland*, where Men of the first Abilities in the Law directed the Proceedings of the Freeholders, such Applications by Heirs-portioners, before Division of their Property, have always been rejected, and no Complaint made by them on that Account. This shows the general Sense of the Nation upon this Point: And it is hoped your Lordships will see no Cause to introduce Innovations.

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The Memorialists beg Leave further to observe, that by the same Rule by which one can create a Vote, by disposing the one Half of L. 800 of valued Rent *pro indiviso*, a Vote may likewise be created by disposing the one Half *pro indiviso* of a Four Pound Land of old Extent retoured before the Act 1681. By such Disposition it cannot be said, that the Retour does not with absolute Certainty retour the Vote claimed to be a Forty Shilling Land: For it is mathematical Demonstration, that the Claimer is possessed of a Freehold of a Forty Shilling Land when he is infeft in the one Half of a Four Pound Land; and it could not be said, that this was splitting Retours, as the one Half is disposed *pro indiviso*. And yet, it is believed, your Lordships would have no Difficulty to reject such Claim, and would by no means chuse to run directly in the Face of many most salutary and just Decisions, which have found, that these Retours cannot be divided; but that although the Retour contained a Twenty Pound Land, or as much more as can be imagined, yet it intitles but to one Vote.

The Memorialists can see no Difference between the present Case and the Disposition of a Tenth-part of a Twenty Pound Land retoured before the Act 1681; and if your Lordships shall sustain such a Disposition to intitle to a Vote, a Door will be opened to multiplying Votes of this kind upon Retours, which are already but too numerous, and by many thought so improper Qualifications, that they ought by no means to be multiplied or extended.

The Difference between such Estate as Capt. Pollock's, held altogether *pro indiviso*, and the common Property in Muirs and Mosses, is obvious. These are considered as accessory to the Property to which they belong, and are regulated thereby; and the Person claiming being in Possession of a free, *separated*, and distinct Estate, is intitled to vote upon that Estate, although perhaps a Commonty, which, as being an *accessorium*, *sequitur suum principale*, should be computed in the Valuation.

As an undivided Property cannot intitle to a Vote, neither can an undivided Valuation.

The great Labour and unwearied Pains which the Lieges have been at in dividing their Valuations, is clear Proof of the Sense of the Country that such Divisions were necessary. Lawyers have always advised them, and the Lieges have always at a great Expence followed them forth. If such Short-hand doing as the present shall be found sufficient, these former Methods of Proceeding have been very idle and erroneous. But as such Divisions of Valuation are necessary, agreeable to Principles, and followed by the universal and unvariable Practice of the Country, it is hoped your Lordships will not introduce this Novelty, contrary to Principles and established Practice.

The Memorialists can still go further, and say, that they have the Opinion of the Legislature itself in their favour upon the above Points. In the 1724, in the contested Election for the County of *Dumbarton*, between the Honourable *John Campbell* of *Mamore*, Esq; and Mr *Haldane* of *Gleneagles*; Mr *Haldane* being returned Member, Mr *Campbell* petitioned the House against the undue Election and Return; and, in examining the Merits thereof, the Committee of Privileges and Elections came to the following Resolutions, which were approved of by the House of Commons *nemine contradicente*.

Resolved, That it is the Opinion of this Committee, That any Conveyance of *undivided Shares* of the Superiority of any Lands in the Shire of *Dumbarton*, in order to multiply Votes, or split an Interest in such Superiority amongst several Persons, with a View to enable them to vote, is contrary to the Act of Parliament made in *Scotland* in the 1681, intituled, *Act concerning the Election of Commissioners for Shires*.

Resolved, That it is the Opinion of this Committee, That no Person claiming a Right by a Purchase, to an *undivided Part* of the Superiority of any Lands, where the *Extent* of the Lands of which he claims the Superiority is not particularly *specified*,
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and the *Lands distinguished* by the Charter by which he claims a Vote, has any Right to vote in the Election of a Commissioner to serve in Parliament for the Shire of *Dumbarton*.

And, in consequence of these Resolutions, it was further resolved, That *Mungo Haldane* was not duly elected.

No Commentary is necessary upon these Resolutions of the House of Commons. They determine both the Points above stated: *1mo*, That an undivided Property cannot intitle to a Vote; and, *2do*, That an undivided Valuation can as little give that Privilege. The Memorialists hope, that when, with the Voice and Practice of the Country, is conjoined the Opinion and Resolutions of the Legislature itself, your Lordships will not hesitate to order Captain *Pollock* to be struck off the Roll.

Much Encomium was bestowed upon this Vote, as being *ex facie* a real, substantial Property, and not a naked Superiority, like many Votes which your Lordships are obliged to canvass. It is believed, that this is a Mistake; and that this Vote consists of Superiority alone, without the least Property annexed to it; and that Captain *Pollock*, if called upon, will not say that he is in Possession of the Half of the Lands of *Over-Pollock*. Any Man who has the Pleasure of his Brother Sir *Robert Pollock's* Acquaintance, will not easily believe, that he, however worthy a Man or kind Brother he is, would give away, during his own Life, the one Half of his Estate to any Mortal, even a Brother.

In respect whereof, &c.

WA. STEUART.

